IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO. 301 OF 2002.

1. Special Land Acquisition
   Officer (N), Goa Tillari
   Irrigation Development Corp.,
   P.O. Tivim Industrial Estate,
   Karaswada, Mapusa.
2. Executive Engineer, Works
   Division VIII, Irrigation
   Department, Now under G.T.I.D.C.,
   W.D. VIII, T.I.P. Complex, P.O.
   Tivim Industrial Estate,
   Karaswada, Mapusa. ... Appellants.

Versus

Mr. Rama Govind Raut, r/o Salem
Village, Bicholim Taluka. ... Respondent.

Mr. H.R. Bharne, Government Advocate for the Appellants.

Mr. Joseph Vaz, Advocate for the Respondent.

Coram : S.A. BOBDE AND
N.A. BRITTO, JJ.

Date : 21st July 2004.

ORAL JUDGMENT (PER BOBDE, J.)

This appeal is preferred by the Special Land Acquisition Officer and Executive Engineer, Works Division VIII, Irrigation Department, against the Award of the Additional District Judge, Mapusa, dated 29th July 2002, in Land Acquisition Case No. 135 of 1996.

2. An area of about 96,714 square metres from Village Salem in Bicholim Taluka was acquired for rehabilitation of project affected persons. On 7th November 1991, a Notification under Section 4 was issued.

3. On 26th March 1993, the Land Acquisition Officer made an Award and offered a rate of Rs. 5/- per square metre to the respondent. Dissatisfied the respondent sought a reference.

4. After hearing the reference, on 29th July 2002, the reference Court increased the amount to Rs. 18/- per square metre. This increase of rate has been done on the basis that the comparable sale instances in the area were made at the rate of Rs. 50/- per square metre. The learned District Judge had framed the following issues:-

> "1. Whether the applicant proves that the market value of the acquired land was Rs. 50/- per sq. metre?
>
> 2. What relief? What order?"

This apparently is on the basis that the sale instances in the area were Rs. 50/- per square metre.

5. As a matter of fact, Mr. Bharne, the learned Government Advocate for the appellants, asserted, and this was not disputed by Mr. Vaz, the learned counsel for the respondent, that there is no instance whatsoever on record which shows a transfer of comparable property at the rate of Rs. 50/- per square metre.

6. Even so, it appears from paragraph 9 of the Judgment of the learned District Judge that the Award proceeds on the basis that there was a sale deed of 26th April 1991, where the land had been sold at the rate of Rs. 50/- per square metre. There is no such deed on record in which land has been sold at the rate of Rs. 50/- per square metre and this fact is not disputed.

7. In the circumstances, we are of view that the entire basis for computation of the market value and adequate compensation has gone wrong. We, therefore, propose to set aside the Award on this short ground. We do not consider it appropriate to speculate the rate which the reference Court would have considered appropriate had it taken into account the correct value of the sale instance, dated 26th April 1991. Moreover, it appears to us that there could be sale instances of varying rates close to the rate which has been taken into account. Having regard to these circumstances, we, hereby, set aside the impugned Award and remand the matter to the Additional District Judge, Mapusa for fresh decision in accordance with law. The Additional District Judge shall consider any application for leading evidence that may be made by either side before passing the Award. The amount deposited by the appellants shall be refunded to them by the Registrar by

cheque drawn in favour of appellant no. 2.

(S.A. BOBDE)
JUDGE.

(N.A. BRITTO)
JUDGE.

ed's.